

# **THEATRE SUBLEASE AGREEMENT**

Between

**WEST VALLEY CITY,**  
a municipal corporation of the State of Utah  
(the “City”)

and

**HALE CENTRE THEATRE,**  
a Utah Nonprofit Corporation,  
(“Hale”)

Dated as of March 1, 2007

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## **THEATRE SUBLEASE AGREEMENT**

**THIS THEATRE SUBLEASE AGREEMENT** (herein the "Agreement") is executed on July \_\_, 2009, to be effective as of the 1<sup>st</sup> day of March , 2007, by and between West Valley City, a municipal corporation of the State of Utah, with principal offices located at 3600 Constitution Boulevard, West Valley City, Utah 84119 (herein the "City"); and the Hale Centre Theatre, a Utah nonprofit corporation, with principal offices located at 3333 South Decker Lake Drive, West Valley City, Utah 84119 (herein "Hale").

### **RECITALS:**

**WHEREAS**, the Municipal Building Authority of West Valley City, Salt Lake County, Utah (the "Building Authority") is the owner of a parcel of land in West Valley City, Utah, described on Exhibit A to this Agreement (the "Site"); and

**WHEREAS**, the City has constructed on the Site a theatre-in-the-round in behalf of the Building Authority, which is known as the West Valley City Harman Hall Community Theatre (the "Theatre"); and

**WHEREAS**, the Building Authority has leased the Theatre and the Site to the City through an annually renewable master lease agreement; and

**WHEREAS**, the City has previously subleased the Site and the Theatre to Hale through a sublease dated December 1, 1997, and this Agreement is a replacement for and a continuation of the previous sublease; and

**WHEREAS**, the use of the Theatre by Hale provides family entertainment and cultural, economic, and recreational opportunities for the City and its residents; and

**WHEREAS**, the Theatre provides a state-of-the-art facility for theatrical and similar productions, and Hale desires to sublease the Theatre from the City upon the terms and conditions set forth in this Agreement in order to continue to provide a long-term venue for theatrical productions presented by Hale; and

**WHEREAS**, the City has determined that it is necessary, desirable, and in the best interests of the City and its residents to enter into this Agreement to continue its relationship with Hale which will continue to present theatrical productions that will expand and enrich the cultural and recreational opportunities available to the residents of the City.

**NOW, THEREFORE**, in consideration of the mutual promises of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **AGREEMENTS:**

### **1. PURPOSE; FAMILY VALUES**

The purpose of this Agreement is to grant a sublease to Hale to be the primary tenant of the Theatre, to use the Theatre for the preparation, rehearsal, staging, and performance of theatrical productions.

It is specifically the purpose of the City in entering this Agreement to promote family values in the City and the community by providing a forum for the presentation of family entertainment, which purpose is hereby confirmed and acknowledged by Hale. Therefore, the parties hereby agree as follows regarding the type of entertainment to be presented in the Theatre. The entertainment to be presented, and all other activities and uses, in the Theatre shall:

- A. Promote strong family values, strong moral values, close family ties, and the integrity of the family unit and portrays family life in a positive manner.
- B. Portray community involvement in a positive manner.
- C. Be priced in an affordable manner such that the performances in the Theatre may be attended by family groups of all economic levels in the community, including free or discounted performances for children, schools, or similar groups.
- D. Encourage volunteerism in the community by providing opportunities for volunteers to participate in theatrical productions and other Community Events held in the Theatre.
- E. Avoid material of a profane, sexual, lewd, violent, or similar nature, but, rather, be of such a nature that individuals of all ages may attend all performances.
- F. Avoid material that is discriminatory or insensitive towards groups or individuals in the community, or that portrays any race, creed, color, disability, age, sex, ancestry, or national origin in a negative fashion.

### **2. DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

- A. “Affiliate” shall mean any person or entity that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such person or entity. For purposes of this Agreement, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, or the power to direct or cause the direction, of the management and policies of an entity, whether through the ownership of ten

percent (10%) or more of voting securities, the possession of ten percent (10%) or more of voting rights, by contract, or otherwise. The interests of the Owners and the Owners' family members may be aggregated for the purpose of determining control of an Affiliate.

- B. "Architect" shall mean Sizemore Floyd Architects, Inc.
- C. "Assignment" shall mean the sale, transfer, assignment, grant, hypothecation, directly or indirectly, by operation of law or otherwise, of an ownership interest in Hale or Hale's interest, or portion thereof, in this Agreement.
- D. "Hale" shall mean the organization currently existing as Hale Centre Theatre, a Utah nonprofit corporation, and its successors and assigns.
- E. "Hale Event" shall mean any event held in the Theatre that is scheduled, conducted, or promoted by Hale and for which an admission fee is charged.
- F. "Bonds" shall mean the Building Authority's Lease Revenue Bonds (Municipal Facilities Project), Series 2006, to be issued pursuant to the Indenture to finance, among other things, a portion of the cost of acquisition, construction, and equipping of the Theatre.
- G. "Building Authority" shall mean the Municipal Building Authority of West Valley City, Salt Lake County, Utah, a nonprofit corporation organized under the laws of the State of Utah.
- H. "City" shall mean West Valley City, a municipal corporation of the State of Utah.
- I. "Community Event" shall mean an event not of a commercial nature, that is appropriate for the Theatre and that is conducted or sponsored by civic, cultural, school, charitable, religious, or other community organizations. Hale Events for which no admission fee is charged shall be considered Community Events.
- J. "Indenture" shall mean the Indenture of Trust, Mortgage, Assignment of Municipal Facilities Project Master Lease Agreement and Security Agreement, dated as of , as heretofore supplemented and amended and as to be supplemented and amended in connection with the issuance of the Bonds, between the Building Authority and the Trustee, a copy of which is attached hereto as Exhibit B.
- K. "Lease" shall mean the Municipal Facilities Project Master Lease Agreement, dated as of                     , as heretofore supplemented and amended and as to be supplemented and amended in connection with the issuance of Bonds, between the Building Authority and the City, a copy of which is attached hereto as Exhibit C.

- L. “Owners” shall mean Mark A. Dietlein, Sally M. Dietlein, Sally Hale Swenson, and any other persons or entities who directly or indirectly have control over Hale for purposes of this Agreement.
- M. “Permitted Encumbrances” shall mean, as of any particular time: (1) liens for taxes, assessments, and other governmental charges not then delinquent; (2) the Indenture and any financing statements naming the City or the Building Authority as debtor and naming the Bond issuer or the Trustee as secured party now or hereafter filed to perfect the mortgage lien and security interests granted by the Indenture; (3) utility, access, and other easements and rights-of-way, mineral rights, restrictions, and exceptions that Hale agrees will not materially interfere with or impair Hale’s operations being conducted in or on the Site; (4) any mechanic’s, laborer’s, materialmen’s, supplier’s, or vendor’s lien or right in respect thereof if payment is not yet due and payable under the contract in question; (5) such minor defects, irregularities, encumbrances, easements, rights-of-way, and clouds on title as normally exist with respect to properties similar in character to the Site and (a) as do not materially impair Hale’s ability to conduct business on the Site or (b) are adequately insured against by a title insurance policy.
- N. “Site” shall mean the parcel of property located in West Valley City, Salt Lake County, Utah, upon which the Theatre and the Theatre Parking Facilities shall be located. The Site is more specifically described in Exhibit A to this Agreement.
- O. “Theatre” shall mean the entire building, the associated structures and grounds, and the Theatre Parking Facilities. The Theatre is located on the Site and is depicted on the Plans and Specifications.
- P. “Theatre Parking Facilities” shall mean the minimum number of two hundred fifty (250) City-owned parking stalls (which shall be available for all Theatre events and which, at minimum, shall be appropriately surfaced, striped, and maintained), and the ingress, egress, walkway, and landscaping areas related to such stalls located on the Site.
- Q. “Trustee” shall mean the entity duly appointed and acting as trustee pursuant to the provisions of the Indenture.

### **3. THEATRE SUBLEASE**

The City does hereby sublet, rent, and demise to Hale, and Hale does hereby take, accept, and sublease from the City, the Site, including the Theatre and the Theatre Parking Facilities, subject to Permitted Encumbrances, upon the terms and conditions and for the purposes set forth in this Agreement, together with all easements, rights, and appurtenances in connection therewith or relating thereto, to have and hold for the term of this Agreement.



#### **4. TERM OF SUBLEASE**

The Initial Term of this Agreement shall commence on the date of the execution of this Agreement by the parties and shall end on December 31, 2020. Commencing on the Possession Date and ending December 31, 2016, Hale shall have the right to the use and occupancy of the Site, including the Theatre and the Theatre Parking Facilities, for the purposes and on the terms and conditions set forth herein.

- A. If this Agreement shall not have been terminated previously, Hale shall have the option to extend the term of this Agreement for an additional term, on such terms as may be agreed upon by the City and Hale, on the expiration date of the initial term or on the expiration date of each additional term as follows:

- (1) An additional term of fourteen (14) years (“First Additional Term”);
- (2) An additional term of ten (10) years (“Second Additional Term”); and
- (3) An additional term of ten (10) years (“Third Additional Term”).

Said option as to each additional term may be exercised only by the delivery of written notice by Hale to the City, delivered at least one (1) year, but not more than two (2) years, in advance of the expiration date of the initial term or the expiration of the preceding additional term, as the case may be. The one (1)-year period following delivery of the notice shall be used by the parties to negotiate the terms and conditions of the additional term. If the parties cannot reach agreement on the terms and conditions of the additional term prior to the expiration of the then-current term, this Agreement and all options to extend this Agreement shall terminate.

#### **5. THEATRE CONSTRUCTION**

- A. The parties agree that the City and Hale have collaborated in the architectural design of the Theatre, and, that Hale shall be estopped from asserting that the City is obligated at its cost to undertake physical alterations to the Theatre to modify the physical design of the Theatre.

#### **6. THEATRE RENTAL PAYMENTS**

As consideration for the sublease to occupy and use the Theatre herein granted to Hale, and for the agreements of the City contained herein, Hale hereby agrees to pay the following Rental payments to the City:

- A. Hale shall make semi-annual payments to the Trustee (the “Rent Payments”) for the use of the Theatre as described in this Agreement. During the Initial Term of this Agreement, these Rent Payments shall be due on or before June 30, and December 30 of each

year for the six months immediately following the payment. The amount of these payments shall be as follows:

2007 Rental Payment: \$412,948 total; \$206,474 per payment  
2008 Rental Payment: \$411,292 total; \$205,646 per payment  
2009 Rental Payment: \$456,736 total; \$228,368 per payment  
2010 Rental Payment: \$458,860 total; \$114,715 per payment  
2011 Rental Payment: \$460,212 total; \$230,106 per payment  
2012 Rental Payment: \$505,792 total; \$252,896 per payment  
2013 Rental Payment: \$508,368 total; \$254,184 per payment  
2014 Rental Payment: \$504,920 total; \$252,460 per payment  
2015 Rental Payment: \$550,700 total; \$275,350 per payment  
2016 Rental Payment: \$533,152 total; \$266,576 per payment  
2017 Rental Payment: \$84,246 total; \$92,123 per payment  
2018 Rental Payment: \$187,930 total; \$93,965 per payment  
2019 Rental Payment: \$191,690 total; \$95,845 per payment  
2020 Rental Payment: \$195,524 total; \$97,762 per payment

If Hale charges a fee for parking in the Theatre Parking Facilities for a Hale Event or any other event or purpose, Hale shall pay to the City a parking rental and use fee (the "Parking Rent"). The Parking Rent shall be the sum of One Dollar (\$1) per paid vehicle.

- B. The payment for the Parking Rent (if any) shall be made to the Trustee and shall be payable on or before the tenth (10th) day of the month for the previous month's rental, or as may be otherwise agreed upon by the parties in writing.
- C. Each payment of any Parking Rent shall be accompanied by a written statement, certified by an officer of Hale to be true, correct, and complete, showing for the previous month (1) the total number of Hale Events, (2) the total number of admissions to Hale Events, and (3) the total number of vehicles that paid a parking fee.
- D. All payments shall be delinquent if not paid on or by the date due. Delinquent sums shall bear interest at a rate of one percent (1%) per month until paid. Payments made after a delinquency shall be applied first to accrued interest and then to the principal sums due.
- E. Until the termination or expiration of this Agreement, if the City receives any charitable donations or grants specifically designated by the donor or grantor to be in behalf of Hale, such donations shall be retained by the City and shall directly offset the Rental Payments to be paid by Hale pursuant to the terms of this Agreement. Such offset shall be calculated as a One Dollar (\$1) reduction in Rental Payments for each dollar of such donation received by the City.

## **7. RESPONSIBILITY FOR THEATRE OPERATIONS; REVENUES**

- A. Hale is solely responsible for all of its operations, activities, and uses conducted in the Theatre; provided, however, that such operations, activities, and uses shall comply with the provisions of this Agreement. Subject to the rental provisions set forth in this Agreement, Hale shall be entitled to collect and retain all revenues, including direct charitable donations, generated by its operations, activities, and uses conducted in the Theatre and by its use and operation of the Theatre Parking Facilities. Hale shall be solely responsible, at its cost and expense, for any and all operating losses resulting from its operations, activities, and uses conducted in the Theatre, and nothing in this Agreement shall be construed to obligate the City to pay Hale for any operating losses incurred by Hale hereunder.
- B. The City hereby grants Hale the sole right, subject to the terms of this Agreement, to operate and/or grant the right to others to operate concessions for the sale of novelties, food and beverages, retail merchandise, and other similar articles, and/or the rental of costumes; or to grant and/or sell the rights to advertise and promote products and services from or in the Theatre, subject only to the City's control of the exterior appearance of the Theatre and to the family values provisions of Section 1 of this Agreement.
- C. Hale may negotiate and enter into service contracts or agreements in the name, and at the sole cost and expense, of Hale, which are reasonably necessary or appropriate in the ordinary course of business in operating the Theatre, including contracts for food and beverages; utilities; ticketing; engineering services; gas; telephone; elevators; escalators; staffing personnel, including guards and ushers; janitorial service; vermin extermination; accounting services; and other services; Hale may also grant permission to third parties to use the Theatre by license or use agreements; provided, however, that such contracts, agreements, or licenses may not extend beyond the term of this Agreement and must be terminable by the City, without penalty, on not more than ninety (90)-days' notice should this Agreement be terminated prior to its expiration.

## **8. THEATRE PARKING FACILITIES**

- A. The City agrees to provide a minimum of two hundred fifty (250) parking spaces on the Site.
- B. The Theatre Parking Facilities shall be managed and operated by Hale. Hale, at its discretion, may charge patrons a fee to park in the Theatre Parking Facilities; provided, however, that if a fee to park is charged, Hale shall pay to the City the sum of One Dollar (\$1) per paying vehicle. This shall be considered the Parking Rent and shall be paid to the City as set forth in Section 7 of this Agreement. All other revenues generated by Theatre parking in the Theatre Parking Facilities shall be income to Hale, and the City shall have no claim therefor. Hale shall be

responsible for providing adequate employees, such as parking attendants and traffic control personnel, to service the Theatre Parking Facilities.

- C. The City shall have the responsibility for the upkeep and maintenance of the Theatre Parking Facilities, including, but not limited to, care of the surface, resurfacing (including adding oil or aggregate on top of the asphalt), striping and signage, snow removal from parking areas and common sidewalks, and sweeping and litter removal from the Theatre Parking Facilities. The City shall perform all of the repairs and replacements of the Theatre Parking Facilities that involve penetrations in, or removal, replacement, or breaking of, the asphalt surface of the Theatre Parking Facilities, including all repaving necessary to repair any penetration; provided that Hale shall pay for all costs of repaving or repair necessitated by acts of Hale or its agents or contractors. The City reserves the right to contract with a third party service company for the provision of any or a portion of such services in behalf of the City.

## **9. SUPPORT PERSONNEL**

Hale shall be the sole provider of support personnel in the Theatre required for the efficient and safe operation of the Theatre. "Support Personnel" shall include, without limitation, ticket takers, ushers, security personnel, first aid personnel, porters, maids, restroom attendants and matrons, engineer operators, Theatre engineers, custodial personnel, an audio/visual technician, and any other support personnel that are deemed necessary by Hale, in its sole discretion, to operate the Theatre and to assure the safety of the patrons.

## **10. UTILITIES, ELECTRICITY, NATURAL GAS, AND WATER**

Electricity, natural gas, water, and other utilities necessary for use of the Theatre, including, but not limited to, regular house lighting, theatre lighting, air conditioning, ventilation, heating, irrigation and culinary water, and other normal operations, shall be provided and paid for by Hale. All utility connections must be made by a representative of the City or a contractor approved in advance by the City. Following completion of the construction of the Theatre and its acceptance by the City, any special or additional connections or wiring requested by Hale shall be provided for in accordance with this section; however, such additional connections or wiring shall be installed at the sole expense of Hale. Connections, equipment, and services provided by Hale must comply with all the applicable codes; regulations; and federal, state, and local statutes and ordinances.

## **11. CITY SPONSORSHIP OF EVENTS**

Hale agrees not to represent or advertise, or allow others to represent or advertise, that the City is sponsoring any event held by Hale in the Theatre, without the written consent of the City.

## **12. COPYRIGHTED MATERIAL**

Hale warrants, in its own behalf and in the artist/performer's behalf, that all copyrighted material to be performed at Hale performances has been duly licensed or authorized by the copyright owner or its representatives, and Hale further warrants, in its own behalf and in the artist/performer's behalf, that any and all royalty fees arising from the use of copyrighted material in the performance have been paid in full. Hale specifically agrees to fully indemnify and hold harmless the City and its agents and employees against any losses or liabilities relating to copyright or trademark violations or claims arising from Hale's performances, activities, or other use of the Theatre.

### **13. CROWD SAFETY; ACCESS**

- A. Hale shall comply with all laws, ordinances, and West Valley City Fire Department and/or Building Inspection Division regulations regarding the number of persons than can safely and freely move about the Theatre; the provision of adequate emergency exiting and emergency signage; and the access of emergency vehicles and equipment to the Theatre.
- B. Hale agrees not to sell or dispose of, or permit to be sold or disposed of, any tickets for any scheduled performance in excess of the seating capacity of the Theatre.

### **14. CITY'S CONTROL OF THEATRE**

The City reserves the exclusive right, at its sole cost and expense, to do the following, as long as such actions do not materially interfere with Hale's ability to conduct a Hale Event at the Theatre:

- A. The City may change, in any manner whatsoever, the number, appearance, dimension, and locations of the Theatre walks, building, landscaping, parking, and service areas; provided, however, that such change receives Hale's prior written approval, which approval shall not be unreasonably withheld.
- B. The City may regulate all traffic entering or exiting the Theatre Parking Facilities, and adjacent to the Theatre.
- C. The City may promulgate, from time to time, reasonable rules and regulations regarding the use of the Theatre for the purpose of ensuring that the Theatre operations are in keeping with the community standards and the family atmosphere of the Theatre, or to provide for public safety; provided that all such rules or regulations shall not adversely limit or restrict Hale's rights under this Agreement, and no such rule or regulation that would directly or indirectly affect any right granted to Hale by this Agreement shall be promulgated without the City's having given prior notice of such action to Hale and having allowed Hale at least thirty (30) days to comment on such proposed action, unless such promulgation is because of an emergency reasonably declared by the City.

## 15. COMMUNITY EVENTS

- A. It is the City's intent that the Theatre be available for the staging of Community Events during such times as Hale is not conducting a Hale Event or rehearsals for a Hale Event. All organizations proposing to hold such a Community Event shall agree in writing, prior to the event, that the Community Event will comply with the family values provisions of this Agreement.
- B. The City and Hale hereby agree that Hale shall adopt a Community Event Policy (the "Policy") to regulate the Community Event uses of the Theatre. The Policy shall be administered by Hale in its capacity as tenant and manager of the Theatre. The Policy shall be subject to the final approval of the City, in its sole discretion, and the City may require changes in the Policy as it determines are desirable or necessary. Upon written notice, the City reserves the right to assume administration of the Policy from Hale, if the City reasonably believes that the Policy is not being administered in accordance with its provisions or that the Policy is being administered in an unfair or inequitable manner. At minimum, the Policy shall comply with the following:
  - (1) Subject to the family values provisions of this Agreement, the Policy shall allow equal access to the Theatre to all civic, cultural, school, charitable, religious, or other lawful community organizations; provided, however, that no more than five percent (5%) of the use of the Theatre shall be by organizations that are not tax exempt under Section 501(c)(3) the Internal Revenue Service Code.
  - (2) The Policy shall require the organization using the Theatre to agree, in writing, to comply with the family values provisions of this Agreement and to agree to pay the full costs of repair and/or replacement of any damage to the Theatre caused by the staging of the Community Event.
  - (3) The Policy shall not allow a Community Event to be scheduled more than ninety (90) days in advance of the proposed date of the Community Event. The Theatre shall be scheduled on a "first come, first served" basis; provided, however, the Policy shall provide an equitable system to ensure that the Theatre is made widely available to a variety of organizations, and that any one organization cannot schedule the Theatre for consecutive Community Event dates if a different organization requests use of the Theatre.
  - (4) The Policy shall require the users of the Theatre under the Community Event Policy, other than Hale, to provide insurance or bonds in amounts and forms acceptable to the City, to provide for reimbursement to the City

or Hale, as may be appropriate, for any damage to the Theatre or its contents caused by the Community Event Policy users' use of the Theatre.

- C. Hale may charge a reasonable fee, approved by the City, to organizations using the Theatre for Community Events. The fee shall be for the purpose of reimbursing Hale for any cleaning or staffing costs, utilities, rent, or other reasonable costs that it incurs and shall not be for the purpose of generating revenue for Hale.
- D. Hale may prohibit use of the lifts, rigging, and theatrical equipment in the Theatre and Hale's personal property and equipment in the Theatre, or may charge organizations a reasonable fee for its rental or use.
- E. Events staged by Hale for which no admission fee is charged shall be considered Community Events and shall be subject to the Community Events Policy. Hale shall receive no preference or priority in the scheduling of Community Events. Nothing in this section shall be construed as creating a priority for Community Events over Hale Events. Hale is the tenant and manager of the Theatre, and the staging of Hale Events retains an absolute priority over Community Events.

## **16. ACCESS**

- A. Hale shall provide the City with access to the Theatre at all reasonable times, to inspect the same and to make any repair, improvement, alteration, or addition thereto.
- B. In inspecting and in making repairs, improvements, alterations, or additions, the City may erect barricades and scaffolding inside and outside of the Theatre and may otherwise interfere with the conduct of Hale's business and operations, where such action is reasonably required by the nature of the work, and such interference shall not be deemed to be a breach or default under this Agreement. The City shall use its best efforts to minimize interference with access to and from the Theatre and with Hale's business and operations in, on, or from the Theatre.
- C. The City shall have the right to use any and all means it deems proper to obtain entry to the Theatre in an emergency, without liability to Hale, except for any failure to exercise due care for Hale's property. Any entry to the Theatre or any portion thereof obtained by the City by reasonable means shall not be construed or be deemed, under any circumstances, to be a forcible or unlawful entry into, or a detainer of, the Theatre or a termination of Hale's Sublease to use and occupy the Theatre. The City agrees to use its best efforts to minimize interference with the business and operations of Hale in, on, or from the Theatre when exercising its rights under this section.

## **17. LAWFUL USE; NEGATIVE COVENANTS OF HALE**

- A. Hale hereby agrees to comply with all applicable federal, state, and local laws, rules, ordinances, and regulations (including those of the City) while managing, operating, or conducting activities in the Theatre. Hale shall make an effort to familiarize itself with these regulations.
- B. Hale shall not do, or permit or authorize others to do, any of the following:
- (1) Operate the Theatre in any manner in violation of the family values provisions as set forth in Section 1 of this Agreement, or for any purpose other than as set forth herein.
  - (2) Knowingly or intentionally engage in any act that, to an ordinarily prudent person in the position of Hale, would be reasonably foreseeable to cause substantial or irreparable damage to the Theatre.
  - (3) Abandon the Theatre during the term of this Agreement.
  - (4) Reduce the number of performance runs per year from the average number performed by Hale during the two years immediately preceding the execution of this Agreement.
  - (5) Knowingly use or occupy, or knowingly permit the Theatre or any part thereof to be used or occupied, for any unlawful, disreputable, or ultra-hazardous use (including the prohibited or unauthorized use, storage, or disposal of any Hazardous Substance), or operate or conduct the business of the Theatre in any manner known to constitute or give rise to a nuisance of any kind.
  - (6) Knowingly do any act or take any action not authorized herein and prohibited by the Lease or the Indenture.
  - (7) Make, authorize, or permit any material modifications or alterations to the Theatre, except as expressly authorized by this Agreement.
  - (8) Authorize or permit permanent fixed signs or advertising on the exterior of the Theatre without the express written permission of the City.
  - (9) Unless specifically authorized to do so by this Agreement, knowingly allow or authorize, directly or through an Affiliate, by action or inaction, without the prior written consent of the City (a) any material or substantial extension of time for, or excuse of performance under, this Agreement; (b) any material or substantial modification, waiver, or excuse of use or operating covenants under this Agreement; (c) any substantial modification, deferral, or waiver of payments, revenue sharing, or other business terms of this Agreement; (d) any Assignment or transfer of



interest requiring the City's consent under this Agreement; (e) any action that would invalidate or cause a default by Hale under this Agreement or excuse performance by the other party thereunder; (f) any termination of this Agreement prior to the expiration of its term; or (g) any action to be taken as an agent or representative of the City.

- (10) Subject to the provisions of Subsection 20(B)(11) below, during the term of this Agreement, Hale or its Affiliates shall not build, construct, manage, operate, or stage theatrical performances in any similar Theatre or facility within a thirty five (35)-mile radius of the Theatre without the written permission of the City.
- (11) Nothing in this Agreement shall limit Hale's right to stage performances at schools, churches, or other charitable venues when deemed by Hale to be in furtherance of its charitable purpose, or in commercial venues from time to time as deemed appropriate by Hale to maximize attendance at the Theatre for Hale Events.

## **18. NEGATIVE COVENANTS OF CITY**

The City shall not do any of the following:

- A. Interfere with Hale's rights or benefits granted by this Agreement.
- B. Take any action materially affecting or diminishing the City's leasehold interest in the Theatre or the Site; provided, however, that the City and the Building Authority may grant deeds of trust or similar instruments in connection with the purchase of the Site and the financing of the costs of the design, construction, acquisition, improvement, and equipping of the Theatre, the Site, and the Theatre Parking Facilities.

## **19. FEES; TAXES; ASSESSMENTS**

Hale shall pay all applicable fees, charges, and taxes, both personal and property, if any, resulting from its possession, occupancy, management, and use of the Theatre. In the event a "possessory interest tax" or privilege tax is imposed on Hale, such tax shall be the sole responsibility of Hale, and shall be paid by Hale.

## **20. HALE'S IMPROVEMENTS AND ADDITIONS**

- A. During the term of this Agreement, Hale shall have the right to improve, alter, or add to the Theatre. Prior to taking any such action, Hale shall submit to the City, for approval, all schematic designs, design development drawings, and final working drawings and specifications for the undertaking of any and all demolition, construction, improvement, alteration, or addition in or on any portion

of the Theatre. All such designs, drawings, and plans shall be prepared by a licensed architect or engineer and shall contain the architect or engineers signature and seal. If the design and construction cost of any demolition, construction, improvement, alteration or addition to any portion of the Theatre exceeds Five Thousand Dollars (\$5,000), Hale shall not begin such demolition or the construction of any improvement, addition, or alteration in or about the Theatre until after receipt of written approval by the City, which approval shall not be unreasonably withheld.

- B. The approval of such designs, drawings, and plans by the City shall not constitute an opinion or representation by the City as to their compliance with any law or ordinance or their adequacy for other than the City's purposes, and such approval shall not create or form the basis of any liability on the part of the City or any of its officers, employees, or agents for any injury or damage resulting from any inadequacy or error therein or for any failure to comply with applicable laws or ordinances. Any approvals by the City pursuant to this Section 23 shall be in addition to (and not in lieu of) any other approvals required under applicable City building, fire, or life safety codes.
- C. Immediately following Hale's receipt of notice by the City of any variation between the approved designs, drawings, and plans and any improvement, addition, or alteration in, on, or to the Theatre, Hale shall either desist from occupation, use, and operation of such improvement, addition, or alteration and remove it from the Theatre, or make it consistent with such approved designs, drawings, and plans. No change shall be made to any permanent electrical wiring or other utility serving the Theatre as of the effective date of this Agreement or at any time subsequent thereto, other than a change made by a properly licensed electrical contractor or electrician, or plumbing contractor or plumber. Hale may modify or install temporary wiring or lighting as may be necessary to stage productions in the Theatre, provided that such wiring or lighting is in compliance with all applicable codes or regulations.
- D. In the event an improvement, addition, or alteration made by Hale requires any change in any facility or service provided by the City, Hale shall pay any costs incurred by the City in connection with such change.
- E. All improvements, additions, and alterations made to the Theatre by Hale shall become the property of the City upon the expiration or termination of this Agreement and shall remain in, and be surrendered with, the Theatre without molestation, disturbance, or injury. Personal property, trade fixtures, and equipment of Hale shall remain the property of Hale and may be removed by Hale upon the expiration or earlier termination of this Agreement.

- F. All improvements, additions, and alterations made to the Theatre by Hale shall be at the expense of Hale and at no cost to the City, unless otherwise specifically agreed by the parties in writing.
- G. Prior to making any improvements, additions, or alterations to the Theatre, Hale shall require its general contractor to furnish and maintain, at no cost to the City, during the full period of the making of any part of any physical addition, alteration, or improvement to the Theatre having a cost of Five Thousand Dollars (\$5,000) or more, insurance coverage for workers' compensation, commercial general liability, and automobile liability in such amounts as determined are adequate by the West Valley City Risk Office. The policies shall contain, or shall be endorsed to contain, the following provisions:
- (1) Commercial General Liability and Automobile Liability Coverages.
    - a. All policies shall include the City, its employees, officers, officials, agents, volunteers, and assigns as additional named insured parties. Any reference to the City, either in the provisions of this section or in any policies provided pursuant to this Agreement, shall be deemed to include the City, its employees, officers, officials, agents, volunteers, and assigns.
    - b. Hale's coverage shall be primary insurance as respects the City, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of Hale's insurance and shall not contribute to or with it.
    - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.
  - (2) Coverage shall state that Hale's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - (3) Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
  - (4) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.

- (5) Acceptability of Insurers. Insurance is to be placed with insurers with an AM Best rating of no less than an A Carrier, with a rating of VII or higher.
- (6) Verification of Coverage. Hale shall furnish the City Risk Manager with certificates of insurance and original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, Hale shall be prepared to provide such copies prior to the execution of this Agreement.
- (7) Continuity of Coverage. Each insurance policy required by this Agreement shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, sent to:

Attn: Risk Manager  
West Valley City  
3600 Constitution Boulevard  
West Valley City, Utah 84119

- (8) Subcontractors. Hale shall include all subcontractors as insureds under its policies, or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- H. Within ten (10) days of the receipt of the certificates of insurance and original endorsements described in Subsection 23(G)(6), the City shall provide written notice to Hale if any of the required policies are unsatisfactory to the City as to form or substance, or if a company issuing any such policy is unsatisfactory to the City. If the City does not issue such written notice otherwise, the required policies shall be deemed to be satisfactory; provided, however, that the City may notify Hale, within a reasonable time after discovery, of any required policies or issuing companies that become unsatisfactory to the City. Upon receipt of notice, Hale shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver, and maintain such insurance as provided herein, the City may declare Hale to be in default and may pursue any and all remedies the City may have at law or in equity, including immediately suspending, discontinuing, or terminating this Agreement.
- I. Immediately after the completion of each improvement, addition, or alteration to the Theatre, Hale shall deliver to the City a complete set of reproducible

drawings, on mylar sheets not smaller than two (2) feet by three (3) feet, reflecting the final “as-built” condition of said improvement, addition, and alteration, together with either the original or a copy of all maintenance and operation manuals necessary for the repair and maintenance of any structural, mechanical, or electrical building system or piece of equipment, that is not a removable trade fixture, installed in the Theatre.

## **21. MAINTENANCE AND CARE OF THEATRE**

- A. Hale shall pay all costs of the operation and maintenance of the interior of the Theatre and, at its sole cost and expense, shall keep the Theatre’s interior rooms, spaces, doors, windows, fixtures, equipment, appurtenances, and systems (including, but not limited to, plumbing, heating, ventilating, air conditioning, sound, and lighting) in good working order and repair and in a neat, clean, safe, and sanitary condition, and in compliance with the requirements of all applicable laws, ordinances, rules, and regulations, at all times throughout the term of this Agreement. Hale shall immediately act to effect repairs when malfunctions or defects arise and, without limiting the generality of any of the foregoing, shall keep the glass of all windows, including all exterior glass, and doors clean and presentable; replace all broken glass immediately; paint and refinish the interior of the Theatre at regular intervals; keep all exterior door closing mechanisms functioning; and keep all pipes, drains, toilets, fixtures, and basins clean and free of debris and any obstructions. Hale shall provide (or cause to be provided) and pay the cost of all recurring janitorial, custodial, and security services.
- B. The City, at its sole expense, shall maintain and repair the Theatre Parking Facilities and landscaping as set forth in Section 9 of this Agreement and shall keep the exterior of the Theatre, excluding exterior glass, in a neat, clean, safe, and sanitary condition. The City shall also provide for Capital Repairs and Replacements as set forth in Section 25 of this Agreement.
- C. Hale shall be responsible for providing or performing all maintenance, repair, and replacement of equipment that is provided by or installed by or for Hale for use in or about the Theatre.
- D. Except as otherwise provided herein or approved by the City, Hale shall not injure, mar, or in any manner deface the Theatre or any equipment contained therein and shall not cause or permit anything to be done whereby the Theatre or equipment contained therein is in any manner injured, marred, or defaced.
- E. Hale shall hire or employ, at its sole cost and expense, all janitorial personnel necessary to keep the Theatre clean and in good repair, including services such as interior painting; carpet cleaning; refuse disposal; and cleaning, washing, and sanitizing of toilets, sinks, showers, and tile surfaces.

- F. Hale agrees that it shall not stage any act or performance in which fire or flame is involved or use any flammable or combustible materials, in or about the Theatre, except in accordance with all applicable codes and the regulations of the West Valley City Fire Department.
- G. Hale is granted the right to install and maintain a plaque or plaques commemorating important or historic events related to Hale, subject to the location and design approval of the City.
- H. Hale agrees to keep the Theatre and facilities free from damage by Hale, its employees, agents, or invitees, including patrons.
- I. The City reserves the right to require Hale to take such reasonable protective measures as the City may deem necessary to ensure the preservation and protection of the Theatre and equipment.
- J. In the event of damage to the Theatre or equipment due to the negligent acts or omissions of Hale, its employees, agents, or invitees, including patrons, Hale agrees to pay the City the sums needed to restore the Theatre or equipment or repair the damage, at the City's option.
- K. In order to retain a family atmosphere in the Theatre and to comply with state law, Hale shall not serve, sell, or display tobacco products or alcoholic beverages, or advertising for such products, anywhere in the Theatre, without the written permission of the City.

## **22. CAPITAL REPAIRS AND REPLACEMENTS**

- A. The following defined terms shall be interpreted in accordance with generally accepted accounting principles.
  - (1) "Capital Budget" shall mean the document submitted and approved as provided in Subsection 25(B) below, which projects, to the extent possible, the need and cost for, and authorizes construction of, Capital Repairs and Replacements.
  - (2) "Capital Repairs and Replacements" shall mean Emergency Capital Repairs and Replacements and Normal Capital Repairs and Replacements.
  - (3) "Emergency Capital Repairs and Replacements" shall mean those Capital Repairs and Replacements that must be accomplished immediately or as soon as possible in order to remove a hazard to health and safety, ensure the structural integrity of the Theatre, or eliminate a factor that causes the Theatre to be non-operational.

- (4) “Normal Capital Repairs and Replacements” shall mean those repairs and replacements of capital items, including fixtures, machinery, or equipment, as distinguished from normal maintenance, which are necessary to repair or replace, over time, capital items of the Theatre subject to wearing out after a useful life. Examples are roofs, floors, carpeting, mechanical systems, and stage lifts. Normal Capital Repairs and Replacements can be forecasted and budgeted for. As an example, the cost of replacement of seats due to normal wear and tear is a Normal Capital Repair and Replacement. Normal Capital Repairs and Replacements also includes repairs and replacements that are reasonably necessary to maintain the structural integrity and operational functioning of the Theatre. Examples are repair or replacement of a faulty roof, HVAC, or lighting system not covered by construction or manufacturing warranties, or with respect to which such warranties have expired.
- B. Hale shall prepare a Capital Budget, for the City’s approval, in accordance with the following:  
Prior to May 1 of each calendar year, Hale shall prepare and submit to the City, for its approval, a preliminary budget for the following fiscal year, which reasonably itemizes and estimates the cost of all Normal Capital Repairs and Replacements. The preliminary budget shall include an estimate of the Normal Capital Repairs and Replacements that shall be required over the next three (3) to five (5) fiscal years and the estimated cost thereof, but such estimates shall not be subject to approval and shall not constitute part of the Capital Budget. The City shall review and approve the preliminary budget prior to July 1 of such calendar year, which approval shall not be unreasonably withheld or delayed; provided, however, that the City, at its sole discretion, may disapprove any budgeted amounts in excess of the balance of the Capital Repair and Replacement Fund, as defined in Subsection 25(D) below. The preliminary budget, as and when approved by the City, shall constitute the Capital Budget. The City shall not make any Capital Repairs and Replacements, other than Emergency Capital Repairs and Replacements or as provided in Section 30, that are not included in the Capital Budget or not otherwise approved in writing by the City.
- C. The City shall deposit, by July 10 of each year for the term of this Agreement, Fifty Thousand Dollars (\$50,000) per year as a reserve (the “Capital Repair and Replacement Fund”) for Capital Repairs and Replacements. The City shall establish, in the name of the Trustee, a separate, segregated interest-bearing account in a financial institution in West Valley City that shall hold the Capital Repair and Replacement Fund. Costs of Normal Capital Repairs and Replacements described above in excess of the amount on hand in the Capital Repair and Replacement Fund and approved under this section shall be the responsibility of the City. Any monies in the Capital Repair and Replacement Fund (including interest earnings) not spent in any given year shall remain in the account and constitute part of the Capital Repair and Replacement Fund, without

affecting the City's obligation to fund the Capital Repair and Replacement Fund annually.

- D. All Capital Repairs and Replacements shall be made by the City or the City's contractors and agents.

## 23. **HAZARDOUS WASTE**

- A. For the purpose of this Agreement, the following terms shall be defined as provided below, unless the context clearly requires a different meaning:
  - (1) "Law or Regulation" shall mean any environmentally-related local, state, or federal law, regulation, ordinance, or order (including, without limitation, any final order of any court of competent jurisdiction of which Hale has knowledge) now or hereafter in effect, including, but not limited to, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.
  - (2) "Hazardous Substance" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination, or cleanup.
- B. The City represents and warrants that to the best of its knowledge, the Theatre and the Site do not contain any Hazardous Substance found to be in violation of any applicable Law or Regulation. The City further represents and warrants that to the best of its knowledge, every mandatory requirement of any applicable Law or Regulation with respect to any environmental hazard or Hazardous Substance affecting the Theatre or the real property on which the Theatre is located has been complied with. The City shall not cause to occur upon, in, or about the Theatre, or permit the Theatre to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. The City will comply with every applicable Law and Regulation regulating any Hazardous Substance found in, on, or about the Theatre or the real property on which the Theatre is located and promptly remedy any violation of each such Law or Regulation caused by the City or its employees or contractors.



- C. Hale shall comply with every applicable Law and Regulation regulating any Hazardous Substance found in or about the Theatre, and shall not cause to occur upon, in, or about the Theatre, or use the Theatre to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, any Hazardous Substance, except in compliance with all applicable Laws and Regulations. Hale shall provide the City with copies of all Material Safety Data Sheets (MSDS), environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence Hale receives from, or provides to, any governmental unit or agency in connection with Hale's handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance in or about the Theatre.
- D. If either party violates any of the terms of this section concerning the presence or use of any Hazardous Substance or the handling or storing of hazardous wastes, such party promptly shall take such action as is necessary to mitigate and correct the violation. If Hale does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in its place, to come onto the premises, and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the City determines that Hale is in violation of any Law or Regulation, or that Hale's actions or inactions present a threat of violation or a threat of damage to the Theatre, the City reserves the right to enter into the Theatre and take such corrective or mitigating action as the City deems necessary. All costs and expenses incurred by the City, where an actual violation had or would have occurred, shall become immediately due and payable by Hale upon presentation of an invoice therefor by the City.
- E. Upon forty-eight (48) hours' notice, Hale shall provide the City with access to the Theatre to conduct environmental inspections and testing as deemed necessary by the City, at the City's expense. Hale shall not conduct or permit others to conduct environmental testing in or about the Theatre without first obtaining the City's written consent, which shall not be unreasonably withheld. Hale shall promptly inform the City of the existence of any environmental study, evaluation, investigation, or results of any environmental testing conducted in or about the Theatre whenever the same becomes known to Hale, and Hale shall provide a written copy of the same to the City within thirty (30) days after the preparation of any such material.
- F. Prior to vacation of the premises, in addition to all other requirements under this Agreement, Hale shall remove any Hazardous Substance that Hale or any of its employees, agents, concessionaires, or contractors or any of its contractors' subcontractors has placed in or about the Theatre during the term of Hale's use of the Theatre, and shall demonstrate such removal to the City's reasonable satisfaction.

- G. In addition to any remedy provided above, the other party shall be entitled to full reimbursement from the other party whenever one party incurs any cost resulting from the other party's violation of any of the terms of this section, including, but not limited to, the cost of cleanup or any other remedial activity, fines, penalties assessed directly against the other party; injuries to third persons or other property; and loss of revenue resulting from an inability to sublease or market the Theatre due to its environmental condition as the result of the other party's violation of the terms of this Agreement (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).
- H. In addition to all other indemnities provided in this Agreement, and notwithstanding the expiration or earlier termination of this Agreement, Hale and the City agree to defend, indemnify, and hold the other free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including, without limitation, cleanup or other remedial costs (and including attorneys, fees, costs, and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance in or about the Theatre or on the real property on which the Theatre is located, resulting from a violation of the terms of this section or the migration of any Hazardous Substance from the Theatre or from the real property on which the Theatre is located to other property or into the surrounding environment that is the result of a violation of the terms of this section by that party whether (1) made, commenced, or incurred during the term of this Agreement, or (2) made, commenced, or incurred after the expiration or termination of this Agreement, if arising out of an event occurring during the term of this Agreement. The indemnification provided in this section shall survive the expiration or earlier termination of this Agreement. Notwithstanding anything contained herein, this section shall not require the indemnitor to indemnify the indemnitees against their sole negligence.

## **24. INSURANCE**

- A. Reference is made to the provisions contained in Article VII of the Master Lease relating to insurance on the Leased Property (as defined in the Master Lease). The City and Hale hereby agree that those provisions shall be satisfied with respect to the Theatre and the Theatre Parking Facilities as follows:
  - (1) Hale, prior to the time of Hale's first use of the Theatre and thereafter throughout the term of this Agreement, shall:
    - a. Maintain public liability insurance against claims for bodily injury, personal injury, or death or damage to property occurring upon, in, or about the Theatre in a minimum amount of Five Million Dollars (\$5,000,000) combined single limit per occurrence, and not less

than Five Million Dollars (\$5,000,000) in the aggregate. The general aggregate limit shall apply separately to this Theatre (or to the activities to be performed pursuant to this Agreement), or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be in the nature of Broad Form Commercial General Liability coverage and shall specifically include, at minimum, the following types of coverage: (i) Premises - Operations; (ii) Product - Completed Operations Hazard; (iii) Broad Form Contractual Insurance; (iv) Independent Contractors; (v) Comprehensive Form; (vi) Broad Form Property Damage; and (vii) Personal Injury.

- b. Maintain automobile liability insurance against claims for death, bodily injury, personal injury, and property damage in a minimum amount of Two Million Dollars (\$2,000,000) combined single limit per occurrence and shall specifically include, at minimum, the following types of coverage: (i) Owned automobiles; (ii) Hired automobiles; and (iii) Non-owned automobiles.
- c. Maintain workers' compensation coverage in a minimum amount at no times less than as required by the workers' compensation laws of the State of Utah, and Employer's Liability limits of One Million Dollars (\$1,000,000) per injury.
- d. Maintain business interruption insurance in an amount ten percent (10%) greater than the projected Base Rent and Variable Rent for the first year of this Agreement, and in an amount ten percent (10%) greater than the previous year's total combined Base Rent and Variable Rent for each year thereafter.

(2) All insurance policies required under this section shall:

- a. State that Hale's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- b. Be issued by insurers of recognized responsibility, licensed or permitted to do business in the State of Utah, except as otherwise provided in the Master Lease. Insurance is to be placed with insurers with an AM Best rating of no less than an A Carrier, with a rating of VII or higher.
- c. Provide that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, or otherwise materially altered, without at least thirty (30) days' prior written notice by certified

mail, return receipt requested, to both the City and the Trustee. Certificates evidencing such policies shall be deposited with both the City and the Trustee, together with appropriate evidence of payment of the premiums therefor, and, at least thirty (30) days prior to expiration dates of expiring policies or contracts held by the Trustee, copies of renewal or new policies or contracts or certificates shall be deposited with the Trustee, together with evidence of payment of premiums therefor.

- (3) All public liability and automobile liability policies maintained under this section shall include the City, its employees, officers, officials, agents, volunteers, and assigns as insured, but only with respect to operations of the Theatre. Any reference to the City, either in the provisions of this section or in any policies provided pursuant to this Agreement, shall be deemed to include the City, its employees, officers, officials, agents, volunteers, and assigns.
- (4) Hale shall include all subcontractors as additional insureds under its policies, or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- (5) Hale shall require any subcontractor, concessionaire, licensee, independent contractor, or other person using the Theatre pursuant to, or in conjunction with, any Hale performance to obtain prior to, and maintain throughout, such use or Hale Event the same scope, limits, and terms of coverage running in favor of the City, as outlined in this section.
- (6) The coverage provided by the insurance policies maintained under this section shall be primary insurance with respect to the City, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of Hale's insurance and shall not contribute to or with it. Accordingly, underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policies maintained under this section shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- (7) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.

- (8) Any failure to comply with the reporting provisions of any insurance policy maintained under this section shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.
- (9) Hale shall furnish the City with certificates of insurance and original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage in its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, Hale shall be prepared to provide such copies prior to the execution of this Agreement. In addition, Hale shall file with the City, no more than one hundred eighty (180) days after June 30 of each year that this Agreement is in force, a written statement of Hale satisfactory to the City containing a summary of all insurance policies then in effect with respect to the Theatre and stating that the insurance policies required by this Agreement are in full force and effect.
- (10) Any deductibles in any insurance policies maintained under this section shall be declared to and approved by the City. At the option of the City, the insurer shall reduce or eliminate such deductibles as respects the City, its employees, officers, officials, agents, volunteers, and assigns, or Hale shall procure a bond, in a form acceptable to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- (11) Within ten (10) days of the receipt of the certificates of insurance described in Subsection 27(A)(2)(c), the City shall provide written notice to Hale if any of the required policies are unsatisfactory to the City as to form or substance, or if a company issuing any such policy is unsatisfactory to the City. If the City does not issue such written notice otherwise, the required policies shall be deemed to be satisfactory; provided, however, that the City may notify Hale, within a reasonable time after discovery, of any required policies or issuing companies that become unsatisfactory to the City. Upon receipt of notice, Hale shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver, and maintain such insurance as provided herein, the City may declare Hale to be in default and may pursue any and all remedies the City may have at law or in equity, including immediately suspending, discontinuing, or terminating this Agreement.
- (12) Hale acknowledges that the City has certain reporting and other obligations to the Trustee and the bond insurance company under the provisions of the Master Lease and agrees to cooperate fully with the City

and to provide such information to the City with respect to the insurance on the Theatre, so as to enable the City to comply with such obligations.

- B. Six (6) years from the date this Agreement is signed, and every five (5) years thereafter, the City shall be entitled to increase the insurance limits of the policies required by this section. To determine the amount of increase in insurance limits, the City shall survey three (3) other community theatres selected by the City and three (3) community theatres selected by Hale in order to determine the then-current insurance limits of comparable policies held by those community theatres. The City shall then average those insurance limit requirements. Hale hereby agrees to modify existing insurance policies or to obtain any insurance policies necessary to reflect the average insurance limit requirements of the above identified theatres in accordance with the procedures described by this section. In no event shall the insurance limits required by this section at the time this Agreement is signed be reduced, regardless of the results of the survey described by this subsection.

## **25. INDEMNITY/WAIVER**

- A. To the fullest extent permitted by law, Hale shall indemnify, hold harmless, and, at the City's option, defend the City from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees or other liability, for death or injury to any person or damage to property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent act or omission of Hale, including its agents, its employees, independent contractors, concessionaires, and performance patrons, in or about the Theatre in connection with Hale's use of the Theatre, Site, and/or Theatre Parking Facilities under this Agreement. Employees of the City attending Hale performances shall be considered members of the general public.
- B. As part of the consideration for this Agreement, to the fullest extent permitted by law, Hale shall indemnify, hold harmless, and, at the City's option, defend the City from all claims, causes of action, lawsuits, losses, liability, costs, expenses, damages, and judgment that are brought, caused, alleged to arise, or obtained as a result of Hale's unlawful use or administration of its exclusive right to control the presentation of performances in the Theatre.
- C. If the City, pursuant to the provisions of this section, exercises its option to require Hale to defend the City, then Hale may participate in said defense for the purpose of ensuring that the attorney's fees and costs of defense are reasonable and necessary.
- D. To the fullest extent permitted by law, the City shall indemnify, hold harmless, and, at Hale's option, defend Hale from and against all claims, causes of action, lawsuits, losses, liability, costs, expenses, damages, and judgment, including, but

not limited to, attorney's fees or other liability, that are brought, caused, alleged to arise, or obtained for death or injury to any person or property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent acts or omissions of the City, including its agents or employees, in or about the Theatre.

- E. Notwithstanding anything contained herein, the indemnity provisions of this section shall not require the indemnitor to indemnify the indemnitee against its sole negligence.
- F. Hale assumes full responsibility for equipment brought or used by it, and for the acts and conduct employees, performers, and all others participating in a performance or event.
- G. Hale agrees that its agents and employees involved in the preparation for, or presentation of, any Hale Event shall not be considered employees or agents of the City for workers' compensation insurance purposes. Hale further agrees that in the event of a claim for workers' compensation benefits against the City made by one of Hale's employees, Hale shall indemnify, defend, and hold harmless the City from any and all damages payable by the City as an employer under the Utah Workers' Compensation Insurance Act.

## **26. DAMAGE, DESTRUCTION, AND CONDEMNATION**

If, during the term of this Agreement, the Theatre, the Theatre Parking Facilities, or any portion of the Theatre or the Theatre Parking Facilities shall be damaged or destroyed, or if title to or use of the Theatre is lost due to an exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation and acts constituting inverse condemnation, such that the Theatre or the Theatre Parking Facilities is/are rendered unusable, or in case of emergency, which in the reasonable determination of Hale and the City prevents the Theatre from being used for Hale performances, Hale may stage theatrical performances at a site other than the Theatre. In the event of an occurrence described in the preceding section, Hale's rental payments to the City under Section 7 above be suspended during the period that the Theatre is not usable, unless Hale is entitled to receive reimbursement for such payments through business interruption insurance or some other form of insurance. Any insurance awards or condemnation awards shall be paid to the Trustee and applied as provided in Article X of the Master Lease. Nothing in this Agreement shall limit the right of Hale to any separate insurance or condemnation award made for Hale's loss of business, for Hale's relocation expenses, or with respect to Hale's equipment and personal property.

Hale shall give written notice (the "Notice of Casualty") to the City immediately upon the occurrence of any event of damage, destruction, taking, or emergency contemplated by either this Section 29 or Section 10.01 of the Master Lease, describing the nature and scope of any such

event. Upon the occurrence of an event of damage, destruction, or condemnation, the City shall determine, in its sole discretion, whether to (A) repair and/or reconstruct (“Reconstruct”) the Theatre pursuant to the Master Lease; or (B) discharge its obligations under the Master Lease with respect to the Theatre by applying the proceeds of insurance, together with any additional amounts as may be necessary to the payment of the Option Price under (and as defined in) the Master Lease. The City shall give written notice to Hale, delivered within ninety (90) days after the City’s receipt of the Notice of Casualty, of its determination. If the City elects to Reconstruct the Theatre pursuant to this provision, the City shall Reconstruct the Theatre to a Performance Ready condition on such time schedule as is set forth in the Master Lease. Once the City elects to, or is required to, Reconstruct, it shall commence and complete such reconstruction work using due diligence. If the City determines to discharge its obligations under the Master Lease with respect to the Theatre, then it shall give written notice to Hale of the termination of this Agreement, effective as of the date of such notice. The foregoing provisions of this section shall be subordinate and subject to the terms and conditions of the Master Lease.

## **27. FORCE MAJEURE**

If the inability to present a performance is beyond the control of the City or Hale, and is due to the acts of third parties, an Act of God, or some other force majeure, it is stipulated that no claim shall be made against the other for damages; provided further, that in such instance, the provisions of Section 29 shall control.

## **28. BREACH BY HALE**

The following acts and omissions shall constitute a default and material breach of this Agreement:

- A. Hale’s violation of any material condition, representation, warranty, covenant, provision, or obligation on its part contained in this Agreement, where such default or deficiency in performance was not remedied within thirty (30) days of receipt of written notice of such violation or deficiency.
- B. Hale’s failure to occupy, possess, or use the Theatre in conformance with the family values provisions of this Agreement.
- C. Hale’s failure to maintain its status as a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or such successor statute as may be applicable, or Hale’s failure to observe any of its certifications and covenants relating to its use of the Theatre, as set forth in the Project Certificate of Hale attached hereto as Exhibit G, which failure could or does adversely affect the tax exempt status of interest on the Bonds.
- D. Hale’s abandonment or vacation of the Theatre, or the staging of theatrical performances in a location other than the Theatre, unless otherwise authorized by this Agreement.



- E. Hale's failure to pay to the City, when due, the Base Rents, Variable Rents, and any Parking Rents due under Section 7 of this Agreement, or any other amounts due under this Agreement.
- F. If any receiver or trustee of all or any part of the business functions or property of Hale is appointed and is not discharged within sixty (60) days after appointment.
- G. If Hale makes any general assignment of its property for the benefit of creditors.
- H. If Hale files a voluntary petition in bankruptcy or insolvency laws now in force or as may be enacted.
- I. If an involuntary petition of bankruptcy or insolvency under the state, federal, or other insolvency laws is filed against Hale and is not dismissed within sixty (60) days after the filing.

## **29. BREACH BY CITY**

The following acts and omissions shall constitute a default and material breach of this Agreement by the City:

- A. The City's violation of any material condition, warranty, representation, covenant, or provision of this Agreement, where such default or deficiency in performance was not remedied within a reasonable time, unless a specific period of time is specifically provided for herein.
- B. If the City suffers a default under the Lease, and the Trustee succeeds to the rights of the City hereunder, the failure of the Trustee to perform its obligations or act in accordance with the terms of this Agreement.

## **30. NOTICE AND REMEDIES FOR BREACH**

- A. In the event either party fails to perform any obligation required by this Agreement, whether imposed by law, ordinance, regulation, or otherwise, or violates any provision of this Agreement, the other party shall notify the breaching party of such failure or violation and, except where impracticable, shall provide the other with a reasonable period to correct, remedy, or cease such failure or violation, which period shall not exceed ninety (90) days after the date of such notice, unless the nature of the notified party's obligation is such that more than ninety (90) days is reasonably required for its performance, in which case the notified party shall not be in default, if, within such ninety (90)-day period, it commences the activity necessary to enable it to perform, and thereafter diligently undertakes such activity to its completion. Nothing in this Agreement

shall enable Hale to avoid liability for interest on any delinquent payments due to the City.

B. After expiration of the cure period provided in Subsection 34(A) above:

- (1) In the event Hale fails to correct, remedy, or cease such breach or violation within the time specified in the City's notice, the City may, at the City's sole option, terminate this Agreement; reenter the Theatre; lease and license others to use the Theatre; and receive rent and license fees therefor as if this Agreement had not been made; provided that, subject to Section 7 of this Agreement, Hale shall remain liable for the full rental amount due to the City pursuant to this Agreement when due, but may offset against such liability the amount received by the City as a consequence of such subsequent sublease or license. The City shall also have such other remedies as may be available to it, which shall include, without limitation, the right to injunctive relief to restrain any breach or violation, and the right to invoke any remedy allowed by law or in equity, including the right to money damages and consequential damages, but not including punitive damages. The City shall take reasonable measures to mitigate any damages.
- (2) The City and Hale agree that because of the status of Hale as the exclusive tenant of the Theatre, and because the City is relying on the long-term residence of Hale in the Theatre in borrowing and expending funds for the design and construction of the Theatre, a breach of this Agreement by Hale's intentional abandonment of the Theatre or other breach of this Agreement will cause great damage to the City in amounts that are difficult for the parties to calculate. Therefore, the City and Hale agree that should Hale breach this Agreement by the intentional abandonment of the Theatre and the staging of theatrical performances at another site, the City shall be entitled to collect from Hale, liquidated damages in the amount of Fifty Thousand Dollars (\$50,000) per calendar year for each calendar year or portion of a calendar year remaining during the term of this Agreement. The liquidated damages shall be payable in addition to any other rights, causes of action, or damages to which the City may be entitled pursuant to the terms of this Agreement or common law.
- (3) In the event the City fails to correct, remedy, or cease such breach or violation within the time specified in Hale's notice, Hale's sole remedy shall consist of the right to injunctive relief to restrain any breach or violation and/or specific performance.

C. At any time after termination of this Agreement, the City may remove from the Theatre any Hale property or item remaining in or about the Theatre.

- D. The rights and remedies given to the parties in this Agreement are distinct, separate, and cumulative remedies, and none of them, whether or not exercised by the party, shall be deemed to be in exclusion of any of the others provided herein or by law or equity.
- E. The provisions of this section shall survive the termination of this Agreement.

### **31. NOTICES; PAYMENT OF RENT**

- A. Unless otherwise provided in this Agreement, all notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by telecopy (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties listed below. Notice shall be deemed delivered upon receipt or refusal to accept delivery at the addresses specified in this section, but each party may change its address by written notice given in accordance with this section.

To Hale:                      Attn: President  
                                     Hale Centre Theatre  
                                     3333 South Decker Lake Drive  
                                     West Valley City, Utah 84119 Telephone:  
                                     Facsimile:

To the City:                      Attn: City Manager  
                                     West Valley City  
                                     3600 Constitution Boulevard  
                                     West Valley City, Utah 84119  
                                     Telephone: (801)963-3220  
                                     Facsimile: (801)966-8455

with a copy to:                      Attn: City Attorney  
                                     West Valley City  
                                     3600 Constitution Boulevard  
                                     West Valley City, Utah 84119  
                                     Telephone: (801)963-3271  
                                     Facsimile: (801)963-3366

- B. Payments by Hale of Base Rent, Variable Rent, and any Parking Rent pursuant to Section 7 of this Agreement shall be made by check or wire transfer to the Trustee as follows:

Zions First National Bank  
Corporate Trust Department  
One South Main Street  
Salt Lake City, Utah 84101  
For Account of West Valley City Bond Fund

### **32. ASSIGNMENT BY HALE**

- A. If Hale desires to assign its interest under this Agreement, Hale shall first obtain the approval of such Assignment from the City. Hale agrees to provide to the City the name of the proposed assignee. The City's review of proposed assignees shall not be unreasonably delayed. The City, in its sole discretion, may consider any or all of the following in providing or withholding its approval of the proposed assignee: (1) financial capacity, (2) reputation as to integrity, (3) record, experience, and qualifications in owning and operating theatre companies, (4) record and reputation in dealing with local government and community concerns, or (5) status of the proposed assignee as a governmental entity or tax exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Service Code. To be a valid Assignment under this Agreement, any assignee must succeed to all of the rights and interests and assume all of the liabilities and obligations of the assignor under this Agreement and must agree to cure any prior default of this Agreement committed by the assignor, all in writing, to the reasonable satisfaction of the City. Upon a valid Assignment approved by the City under this section, and assumption by the assignee(s) of all of assignor(s)' duties hereunder, the assignor(s) shall be relieved of all liability under this Agreement.
- B. The City, in granting approval of such Assignment, shall require as a condition precedent to the effectiveness of such approval that Hale shall cause to be delivered to the City, an instrument, in writing, executed by the assignee, grantee, purchaser, or transferee, in which such person shall assume all of the rights, interests, liabilities, and obligations of Hale under this Agreement, agree to cure any default of this Agreement committed by Hale, and agree to perform all of the terms and provisions of this Agreement (the "Assumption Agreement"). Upon delivery by Hale of the Assumption Agreement and approval of the Assignment by the City, the assignor's obligations under this Agreement shall be null and void, and the assignor shall have no further direct or indirect liability or obligation hereunder, notwithstanding any other provision of this Agreement.
- C. In the event less than a controlling interest of Hale's interest in this Agreement is assigned, granted, purchased by, or transferred to one or more other persons or

entities, the assignor shall remain jointly and severally liable for the performance of its obligations hereunder, unless released in writing by the City. Approval by the City of any Assignment, grant, purchase, or transfer shall not be deemed to be a release.

- D. Hale has the continuing right to pledge or hypothecate its interest under this Agreement, and the revenues arising from this Agreement in connection with any loans to Hale. The lender shall have the right to exercise its rights and remedies under the loan documents, including the right to succeed to the rights of Hale under the Lease.

### **33. ASSIGNMENT BY CITY**

The City may assign any and all obligations and rights that it may have under this Agreement to the Building Authority, the Trustee under the Indenture, or to any other governmental entity.

### **34. BUILDING AUTHORITY; SUBLEASE**

- A. The Building Authority is the owner of the Site and the Theatre. The Building Authority constructed the Theatre, and leases the Theatre to the City by means of the Lease.
- B. This Agreement is between the City and Hale and shall be a sublease of the Theatre, with the Lease of the Theatre being between the City and the Building Authority.
- C. The Lease is subject to annual appropriation by the City. In the event that the City fails to appropriate funds for payment of its obligations under the Lease, the rights, duties, and obligations of the parties shall be governed by the Subordination, Attornment, and Nondisturbance Agreement described in Section 39 below.

### **35. SUBORDINATION, ATTORNMENT, AND NONDISTURBANCE**

The City and Hale hereby agree that it is in the best interests of both parties, and, therefore, that they have entered into a Subordination, Attornment, and Nondisturbance Agreement a copy of which is attached as Exhibit H.

### **36. PRIORITY OF AGREEMENTS**

In the event of any express conflict in any of the provisions of the following documents, the conflict shall be resolved by giving precedence to the documents in the following order:

- A. The Lease and any modifications or amendments thereto, subsequent to the effective date of this Agreement, that are consistent with this Agreement.
- B. The Subordination, Attornment, and Nondisturbance Agreement.
- C. This Theatre Sublease Agreement.

### **37. AMERICANS WITH DISABILITIES ACT**

Hale shall be responsible for ensuring that the Theatre is operated in compliance, in all respects, with the provisions of the Americans with Disabilities Act (the “ADA”). The City shall be responsible for ensuring that the interior and exterior of the Theatre shall comply, and continue to comply, in all respects, with the provisions of the ADA.

### **38. CONFLICT OF INTEREST**

Hale warrants that no City employee, official, or agent has been retained by Hale to solicit or secure this Agreement upon an agreement or understanding to be or to become an officer, agent, or employee of Hale, or to receive a commission, percentage, brokerage, or contingent fee or any other form of compensation therefor.

### **39. ATTORNEY’S FEES**

In the event there is a default under this Agreement, and it becomes reasonably necessary for either party to employ the services of an attorney in connection with the default, either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney’s fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing or in terminating this Agreement.

### **40. ENTIRE AGREEMENT**

This Agreement, including all exhibits attached hereto and all other documents incorporated herein by reference, contains the entire agreement between the parties, and no statement, promise, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified, or altered, except in writing signed by both parties.

### **41. CONSTRUCTION OF AGREEMENT**

This Agreement is the result of the joint efforts and negotiations of the parties hereto, and no single party is the author or drafter hereof. All of the parties assume joint responsibility for the form and position of each and all of the contents of this Agreement, and the parties agree that this Agreement shall be interpreted as though each of the parties participated in the composition of this Agreement and each and every part thereof.

#### **42. NO JOINT VENTURE**

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Hale, and that Hale is an independent contractor, and not an agent, of the City. The City and Hale hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein, or in any document executed in connection herewith, shall be construed as making the City, on the one hand, and Hale, on the other hand, as joint venturers or partners. Hale is an independent contractor with the rights and obligations provided in this Agreement, coupled with an ownership interest in the alterations, additions, furniture, fixtures, and equipment paid for by Hale.

#### **43. LAWS TO APPLY**

This Agreement shall be construed under and in accordance with the laws of the State of Utah and the laws of the United States of America.

#### **44. AMENDMENT**

No amendments, modifications, or alterations of the terms of this Agreement shall be binding unless the same be in writing, date subsequent to the date of this Agreement, and duly executed by the parties hereto.

#### **45. SEVERABILITY; NON-WAIVER**

- A. The illegality or unenforceability of any of the provisions of this Agreement shall not render the remainder unenforceable, if the remainder of the Agreement can still be implemented fairly.
- B. Waiver by the City or Hale of any term of this Agreement in any specific circumstance shall not be deemed a waiver in any subsequent circumstance.

#### **46. INDEPENDENT CONTRACTOR**

Hale is an independent contractor and entity, and the employees, agents, and servants of Hale shall in no event be considered to be the employees, agents, or servants of the City. This Agreement is not intended to create an agency relationship between Hale and the City.

#### **47. DISCRIMINATION PROHIBITED**

Hale, in its admission policies to Hale performances and in its employment practices, shall comply with applicable federal, state, and local laws governing nondiscrimination in business and employment practices; and Hale further agrees to insert the foregoing provision in all subcontracts hereunder.

**48. EFFECTIVE DATE**

The terms, conditions, and obligations of this Agreement shall become effective upon the execution of this Agreement.

**49. TIME OF ESSENCE**

Time shall be of the essence of this Agreement.

**50. MISCELLANEOUS OBLIGATIONS AND REPRESENTATIONS**

A. Hale agrees, pledges, and commits:

- (1) Except as otherwise provided for in this Agreement, that it will stage theatrical performances solely at the Theatre and at no other locations during the term of this Agreement, and that such performances shall be staged in compliance with the terms and conditions of this Agreement.
- (2) That it shall not voluntarily transfer, or engage in any act that would cause the transfer of, the theatrical performances any other city, town, county, or other theatre during the term of this Agreement.
- (3) That it is duly organized, validly existing, and in good standing under the laws of the State of Utah and has all corporate power and authority necessary to execute and deliver this Agreement and to perform its obligations hereunder; that this Agreement has been approved by all requisite action of its Governing Board of Trustees; and that this Agreement is valid, binding, and enforceable against Hale in accordance with its terms.
- (4) That it shall maintain its status as a Utah nonprofit corporation and shall perform its obligations and take such actions as may be necessary for Hale to remain as a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code or such successor statutes as may be applicable.

B. The City hereby represents and warrants to Hale that it has the power and authority to execute and deliver this Agreement; that this Agreement has been approved by all requisite action of its City Council; and that this Agreement is valid, binding, and enforceable against the City in accordance with its terms.

**51. FINANCING**



The City reserves the right to engage in public or private financing for the purposes of funding, in whole or in part, the City's undertakings under this Agreement. Hale, at no cost to itself, shall reasonably cooperate with the City in such financing and shall reasonably consider any suggested modifications in this Agreement that may be requested by the City to facilitate such public or private financing; provided that Hale's rights are not adversely modified, impaired, or diminished by such modifications, or its obligations increased.

**IN WITNESS WHEREOF**, the parties have executed this Theatre Sublease Agreement as of the day and year first above written.

**CITY:**

WEST VALLEY CITY

\_\_\_\_\_  
Dennis J. Nordfelt, Mayor

ATTEST:

\_\_\_\_\_  
Sheri McKendrick, City Recorder

APPROVED AS TO FORM  
WVC Attorney's Office

By: \_\_\_\_\_

Date: \_\_\_\_\_

**HALE:**

HALE CENTRE THEATRE

Mark Dietlein, President

STATE OF \_\_\_\_\_ )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, personally appeared before me Mark Dietlein, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the President of Hale Centre Theatre, a Utah nonprofit corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors or its bylaws, and he acknowledged to me that said corporation executed the same.

Notary Public

**Exhibit A**  
**to**  
**Theatre Sublease Agreement**

BEGINNING AT A POINT LOCATED NORTH 89°55'00" EAST ALONG THE SECTION LINE 668.13 FEET AND SOUTH 1277.80 FEET FROM THE WEST 1/4 CORNER OF SECTION 27, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 385.37 FEET; THENCE SOUTH 89°55'00" WEST 345.94 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF DECKER LAKE DRIVE; THENCE NORTHWESTERLY ALONG THE ARC OF AN 840.00 FOOT RADIUS NON-TANGENT CURVE (RADIUS BEARS: SOUTH 67°10'17" WEST), 116.95 FEET THROUGH A CENTRAL ANGLE OF 7°58'37" (CHORD: NORTH 26°49'02" WEST 116.85 FEET); THENCE NORTH 30°48'20" WEST 315.74 FEET THENCE ALONG THE ARC OF A 760.00 FOOT RADIUS CURVE TO THE RIGHT 11.10 FEET THROUGH A CENTRAL ANGLE OF 00°50'12" (CHORD: NORTH 30°23'14" WEST 11.10 FEET), THE PREVIOUS 2 COURSES ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF DECKER LAKE DRIVE; THENCE NORTH 89°55'00" EAST 565.97 FEET TO THE POINT OF BEGINNING. CONTAINS 174,240 SQ. FT. OR 4.00 ACRES.

**Exhibit B**  
**to**  
**Theatre Sublease Agreement**

Indenture of Trust, Mortgage, Assignment of Municipal Facilities Project

Master Lease Agreement and Security Agreement,

dated as of                     ,

as heretofore supplemented and amended and as to be supplemented and amended

in connection with the issuance of the Bonds,

between the Building Authority and the Trustee,

which is incorporated herein by reference.

**Exhibit C**  
**to**  
**Theatre Sublease Agreement**

Municipal Facilities Project Master Lease Agreement,

dated as of 9,  .

as heretofore supplemented and amended and as to be supplemented and amended

in connection with the issuance of Bonds,

between the Building Authority and the City,

which is incorporated herein by reference.

**Exhibit D**  
**to**  
**Theatre Sublease Agreement**

Plans and Specifications prepared by the Architect  
and dated October 21, 1997,  
which are incorporated herein by reference.

Document comparison by Workshare Professional on Friday, June 12, 2009 4:55:08 PM

Input:	
Document 1 ID	interwovenSite://pwwork/PWBGL/295000/1
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Document 2 ID	interwovenSite://pwwork/PWBGL/295000/2
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Rendering set	standard

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<a href="#">Moved to</a>	
Style change	
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Padding cell	

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Format changed	0
Total changes	118